

1 recollection is accurate and his recollection is
2 flawed.

3 THE COURT: What's your next question?

4 MR. ZAK: Because he is not in his best mind at
5 the time.

6 THE COURT: What's your next question going to be?

7 MR. ZAK: Depends on his answer, really, I'll be
8 honest.

9 THE COURT: What if he says, yes, I was pulling my
10 hair, where are you going?

11 MR. ZAK: Nowhere.

12 THE COURT: He already testified to that. Well, I
13 think we've got that.

14 MR. ZAK: Did he say yes?

15 THE COURT: Did he give an answer?

16 MR. D'ALBA: He said I may have been.

17 THE COURT: Something like that. Are you done?

18 MR. ZAK: I think so.

19 THE COURT: Okay. Now, tell me, are we going to
20 finish before four-thirty for that juror?

21 MR. ZAK: It's my intention.

22 THE COURT: Are you finished with your cross?

23 MR. ZAK: I want to just review a few things.

24 THE COURT: What are you going to do after his
25 cross?

1 MR. D'ALBA: If I ask anything, I promise you it
2 will be very brief.

3 THE COURT: Okay. Where are you going after him,
4 have you got more?

5 MR. D'ALBA: I have another witness that I would
6 intend to discuss with my client, but I believe if we
7 call him, it would be tomorrow morning, Your Honor.

8 THE COURT: That would be all right, because if
9 you have some rebuttal for tomorrow morning.

10 MR. ZAK: I'm afraid I'll have to have rebuttal.

11 THE COURT: Okay. Then we'll save that guy for
12 tomorrow, whomever.

13 MR. D'ALBA: Okay.

14 THE COURT: See if we can finish with this one.

15 (Whereupon, discussion at sidebar was concluded.)

16 THE COURT: Okay. Mr. Zak?

17 BY MR. ZAK:

18 Q Now, Mr. Leuschen, just to clear a matter up, you were
19 approached by Trooper Myers, were you behind -- you were in the
20 driver's seat of your car, is that right?

21 A Yes, with the door open.

22 Q Excuse me?

23 A With the door open.

24 Q Were you fished with your hunting activities at that
25 time?

1 A My intention was to go back to Joe Ratajczak's house to
2 see if he was available to go out for the rest of the afternoon
3 to do a little bit of hunting.

4 Q Rest of the afternoon? Now, we are after four o'clock
5 now at that time?

6 A I believe it was a little bit before four o'clock, my
7 intention was to try to get to his house about the time the
8 children would be getting out of school or just prior to then.

9 MR. ZAK: That's all the questions I have, Your
10 Honor.

11 THE COURT: Okay. Attorney D'Alba?

12

13

REDIRECT EXAMINATION

14

15 BY MR. D'ALBA:

16 Q Mr. Leuschen, just getting back to the earlier issue of
17 taking these pistols hunting with you, in your mind is there a
18 distinction between taking something with you and using
19 something to hunt?

20 A I would say yes. I take a pocket knife with me
21 sometimes. Sometimes I take it just to carve on a piece of
22 deadwood or something along the way, something that wouldn't be
23 large enough to field dress an animal, but something that helps
24 me pass the time if I'm sitting and hunting, whatever.

25 Q You're permitted under the law to also take a pistol

1 fishing with you, have you every done that?

2 A Yes.

3 MR. ZAK: I'm going to object, that's immaterial,
4 nobody has brought in any evidence at all about
5 fishing.

6 MR. D'ALBA: First of all, there has been
7 evidence, number one; number two, it's material because
8 Mr. Zak is trying to make an issue out of the gun
9 wasn't proper for hunting and my point is simply this,
10 it doesn't have to be proper for hunting, nor does it
11 have to be proper for fishing because you do not use a
12 gun to fish, you use a fishing pole.

13 THE COURT: Okay.

14 MR. ZAK: Just the point --

15 THE COURT: I'm going to allow you -- the
16 defendant to answer that question then, we are not
17 going to go any further afield there.

18 Would you answer that question, Mr. Leuschen?

19 THE WITNESS: Would you restate that?

20 THE COURT: Do you want to read that, Andrea,
21 please.

22 (Whereupon, the requested portion of testimony was
23 read by the court reporter.)

24 THE WITNESS: Yes, I believe I have.

25 MR. D'ALBA: Thank you. I have no further

1 questions, Your Honor.

2 THE COURT: Anything further, Mr. Zak?

3 MR. ZAK: No, that's all.

4 THE COURT: Ladies and gentlemen, I think we are
5 going to stop at this point because we have additional
6 witnesses that we are not going to get in today.
7 Unfortunately, as I indicated earlier, we can't start
8 tomorrow until 10:30 because this courtroom is not
9 available, and rather to try to find us another spot, I
10 think we will reconvene right here in those chairs at
11 10:30 tomorrow and we will go until we finish.

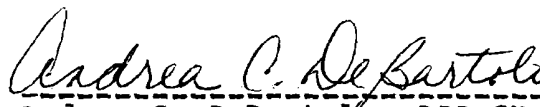
12 Now, again, I want to caution you. You have not
13 heard the whole case yet, there is more coming. Please
14 don't draw any conclusions or even think about it or
15 discuss it with anybody until you have heard it all and
16 then you can discuss it until your heart's content. We
17 will adjourn.

18 Gentlemen, I'll see you in my chambers at ten in
19 the morning. We will go through some preliminary
20 matters and I'll see the jury here at 10:30.

21 (Whereupon, court recessed at 4:21 p.m.)
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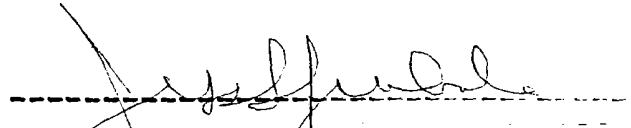
C E R T I F I C A T I O N

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.



Andrea C. DeBartolo, RPR-CM
Official Court Reporter

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.



President Judge Jess S. Jiuliente

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
 VS : OF ERIE COUNTY, PENNSYLVANIA
 DOUGLAS BURTON LEUSCHEN : CRIMINAL DIVISION
 : NO. 696 OF 1989

RECORD-FILED

SEP 12 1990

SUPERIOR COURT
 PITTSBURGH

JURY TRIAL

(Day 2)

CLERK OF RECORDS
 APR 30 4 08 PM '90
 CLERK OF COURTS
 CRIMINAL DIVISION
 COUNTY COURT HOUSE
 ERIE, PENNA

Proceedings held before the Honorable
 John R. Falcone, in Courtroom Number 2,
 Erie County Courthouse, Erie, Pennsylvania,
 on Friday, July 14, 1989, commencing
 at 11:00 a.m.

RECORD-FILED
 AUG 18 1990
 SUPERIOR COURT
 PITTSBURGH

APPEARANCES:

Kenneth Zak, Esquire, appearing on behalf of
 the Commonwealth.

Joseph J. D'Alba, Esquire, appearing on behalf of
 the Defendant.

RECORD-FILED

Andrea C. DeBartolo, RPR-CM -- Official Court Reporter

SUPERIOR COURT
 PITTSBURGH

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I_N_D_E_X

WITNESSES:

	DIRECT	CROSS	REDIRECT	RECROSS
FOR THE COMMONWEALTH:				
(Rebuttal witnesses)				
William Marino	29	32	33	--
Richard Myers	35	37	--	--
FOR THE DEFENDANT:				
Joseph Ratajczak	22	25	--	--

EXHIBITS:

	Admitted	Marked
FOR THE DEFENDANT:		
A (hunting regulations)		29
B (provisional licenses)	27	29

P_R_O_C_E_E_D_I_N_G_S

(Whereupon, following discussion occurred in chambers.)

THE COURT: Early this morning my office had a call from J. Mark Graham, who is our Juror Number 3, he's Number 249, and the message was that he is ill and cannot come in. That matter has been discussed with both counsel and we all agree that the proper procedure would be to excuse J. Mark Graham and to take our first alternate, Alternate 1, Number 632, who's name is Arlene Slater and sit her in the jury box in place of Mr. Graham. Now, we did that.

The second matter counsel and I discussed in chambers this morning is the handling of the exhibits, in light of the fact we have some weapons and ammunition here. And we all agree that the rifle, which is Exhibit Number 13, and the envelope with the ammunition for the rifle, which is Exhibit Number 14 of the Commonwealth's, need not go to the jury in that the case involving those is my decision.

Now, in addition to that, we have decided that it would be better that no ammunition of any kind goes out with the jury in their deliberations because of safety,

1 and the fact that they will have the handguns and we
2 don't want jurors fooling around, loading them, so we
3 have all agreed that although the ammunition are proper
4 exhibits, we will keep them away from the handguns.

5 Now we talk about the State Police information
6 request, that's one we haven't decided yet.

7 MR. ZAK: Our position on that, Your Honor, is
8 that that is a necessary element of the charge. The
9 police officer authenticated it, so it was admitted.
10 It was enabled to be admitted into evidence and it's a
11 business record, it's an exception to the hearsay
12 rule -- well, it's an official record.

13 MR. D'ALBA: No question as to its admissibility.

14 MR. ZAK: I'm trying to explain it.

15 THE COURT: One at a time so Andrea can get it.

16 MR. ZAK: Please, you have been a little frisky.

17 MR. D'ALBA: I'll be more frisky before the day
18 goes on.

19 MR. ZAK: And our position on that is it's just a
20 necessary element of the charge. Now, if the defendant
21 had signed a confession of some sort or there had been
22 some extensive medical record or some piece of paper
23 that the jury would give undo emphasis to, of course,
24 that couldn't go out with the jury, that's the law and
25 that's been the practice and it's fair. But this is

1 just -- all this says is that he did not have a license
2 to carry a firearm in this Commonwealth, but further,
3 it has something that's -- that partially favors the
4 defendant, and it does indicate that he had the
5 provisional permits for at least two of those guns and
6 those are attached to that also. So it's just a fair
7 statement and it doesn't indicate anything beyond those
8 statements indicating that he's guilty of any other
9 element of the offense, it just establishes one element
10 of the offense.

11 THE COURT: Okay. Mr. D'Alba?

12 MR. D'ALBA: Your Honor, the question of what
13 exhibits should go to the jury in particular in this
14 case is solely within the discretion of the trial
15 court. My problem with permitting this document to go
16 to the jury is that if the jury were to understand the
17 rule -- follow the statute only with regard to the
18 section about -- the primary section about no person
19 shall carry a firearm without a license, if they only
20 go that far and stop, then seeing the first indication
21 on that exhibit that there is no license may unduly
22 prejudice the defendant.

23 THE COURT: Okay. In response to that, I'm going
24 to let Exhibit 17 go, and I'll instruct them that they
25 absolutely should not stop at that point, they should

1 go on to 2 and 3, so I'm going to let 17 go out. The
2 de minimis argument -- I presume we will have a break
3 before I instruct the jury and I'll decide that at that
4 time.

5 MR. ZAK: Your Honor, if I may interject, I would
6 like all the jury instructions settled before we do our
7 closing arguments. I think that would be appropriate,
8 that's fair.

9 THE COURT: I'll decide that from the bench before
10 we start, before we start our closings, I'll tell you
11 what I have done about the de minimis argument so you
12 know how to frame your argument.

13 MR. ZAK: If I may speak to that point, since we
14 are on the record, I strenuously object to that because
15 our position of de minimis is a matter of law. The
16 jury is here to decide only facts and to charge the
17 jury on de minimis, it would be calling for the
18 possibility of jury nullification, which the
19 Commonwealth certainly doesn't agree with.

20 THE COURT: Okay.

21 MR. ZAK: And further, that even just the way the
22 facts are being presented by the Commonwealth in this
23 case, if the jury finds the defendant guilty, just by
24 definition, the offenses are not de minimis.

25 THE COURT: Do you want to speak to that, Jay, any

1 more than you already have? I know your position, you
2 don't have to, you've already got it, but you're
3 welcome to.

4 MR. ZAK: Well, he's free to put it on the record.

5 MR. D'ALBA: The response is simply that
6 de minimis is a principle of law, but it is the
7 exception to the jury being sole fact-finding body in
8 that it permits the jury to apply the facts to the law
9 and determine if that offense is of minor consequence,
10 that they do have the right to acquit on that.
11 Although the principle of the jury nullification, legal
12 principle, has been abolished for over 50 years now in
13 the United States, unfortunately, so this is one last
14 bastion of that. And in light of that, the jury should
15 be made aware of that and my client should be afforded
16 the right to have that, in spite of the fact that -- of
17 the two other permits and that he attempted to get a
18 permit for the third gun.

19 THE COURT: Now, before we get into the offer or
20 the motion in limine, do I have everything else
21 covered?

22 MR. D'ALBA: Just my question would be with regard
23 to the -- will you be giving a charge on
24 semiautomatics?

25 MR. ZAK: What charge are you referring to?

1 MR. D'ALBA: Well, there is several points that
2 are requested, all regarding that if you find that the
3 other -- that it's within the exception, and that the
4 qualifications of the exception are met, that it
5 doesn't matter if it's a semiautomatic weapon.

6 MR. ZAK: That's inapplicable for two reasons;
7 one, that if it's in the exception, he still has to
8 have one of those provisional permits, and he didn't
9 have it.

10 MR. D'ALBA: That's a question of fact for the
11 jury to decide.

12 MR. ZAK: Well, but he didn't have it, so whatever
13 type of weapon it was, he's clearly in violation. Any
14 view of their case --

15 THE COURT: Let me stop you right there, Jay,
16 that's the way I went off last night, after you left.
17 My thought is if he doesn't qualify so that he's
18 eligible for the exception, it doesn't matter what it
19 is he was shooting, whether it's a bazooka --

20 MR. D'ALBA: Right, Your Honor, but I think the
21 determination of whether he has it or not is left to
22 the jury. That's fact, they have to find that he
23 doesn't have that --

24 THE COURT: I understand that.

25 MR. D'ALBA: -- number one. And number two, the

1 thing about semiautomatic weapons is just so
2 prejudicial, that there is a recent Federal ban on it,
3 that in lack of that, it may deprive him of a fair
4 trial and due process.

5 MR. ZAK: I mean, that's ridiculous. He had the
6 semiautomatic weapon, there is no Federal ban on it,
7 it's a perfectly lawful weapon. We are only saying
8 that he was using it in an unlawful way. As far as the
9 semi being carried, a semiautomatic, I mean, the
10 defense wants to use that little hunting manual,
11 hunting regulations, you can't hunt with a
12 semiautomatic pistol.

13 MR. D'ALBA: Well, the Judge has already corrected
14 you on that misrepresentation of the law.

15 MR. ZAK: I wasn't corrected at all, in fact, I
16 clarified it by saying, well, in some circumstances you
17 can use a semiautomatic shotgun. There is no way you
18 could use a semiautomatic single projectile weapon --

19 THE COURT: Here's what I would conclude with
20 that. Let's assume for some reason he did receive a
21 permit that involves a 9mm, I would say that even
22 though that might be a violation of game laws to use
23 that weapon, it would qualify for the exception. I
24 think I would conclude that, Ken, but I'm not sure that
25 we are going to get there because there is no evidence

1 whatsoever that he has a permit, and I don't know how
2 they could ever decide that he does.

3 MR. ZAK: Well, I don't either, but it's our
4 position that there just -- that 9mm just did not
5 belong in the hunting fields.

6 THE COURT: But I'll tell you, Jay, I'm not going
7 to charge on that. I'm not going to prevent either of
8 you from arguing that position, but I think I ought not
9 charge on that.

10 MR. D'ALBA: Just if I may for the record, Your
11 Honor. The logic that I'm pursuing is this, is that if
12 we get the instruction on the de minimis, and if they
13 find that he did attempt to get that permit, and they
14 say that that attempt and the failure to adequately
15 provide it, that violation is de minimis, then they are
16 going to say, well, but is that -- having the 9mm
17 improper because it's a semiautomatic? If they do get
18 that far, I want them to know that the fact that it is
19 a semiautomatic weapon is not prohibitive of a finding
20 of acquittal.

21 THE COURT: Well, why is that a matter of law
22 rather than a fact for the jurors to decide?

23 MR. D'ALBA: Well, again --

24 THE COURT: I don't want to take everything away
25 from them, I think they ought to decide that

1 themselves.

2 MR. D'ALBA: Well, I'm just asking for the Court
3 to instruct them that so they don't say the
4 semiautomatic weapon -- and to follow Mr. Zak's, what I
5 believe to be incorrect, logic, that you can't even
6 take it with you even though you don't hunt with it,
7 then he'd be prejudiced. He'd say ultimately you can't
8 shoot anything with it, therefore you can't carry it.
9 And I want the jury to know what the Court, I believe,
10 has concluded, that you can carry a semiautomatic
11 weapon if you have the permit. And if they find that
12 even though he didn't have the permit, it is a de
13 minimis violation, then it would all --

14 THE COURT: Okay. I'll decide that as well before
15 you argue. The second thing you want me to decide in
16 addition to the de minimis argument is whether or not
17 the 9mm pistol would qualify for the exception, had it
18 been properly registered, or the fact is, we do -- we
19 just consider that it doesn't count at all because it's
20 not a legal hunting weapon, that's basically where we
21 are.

22 MR. D'ALBA: Correct.

23 MR. ZAK: Right, but see, a lot of this goes into
24 the area of argument, because the gist of my argument
25 is that -- concerning the hunting laws and regulations,

1 is that if this guy were a legitimate hunter, he would
2 be following those laws and regulations.

3 THE COURT: Okay. All right. Now, next thing
4 is -- the only thing we have left now, your offer, you
5 want to know what he's going to do on rebuttal.

6 MR. D'ALBA: Offer and possible subsequent --

7 MR. ZAK: Before we do that, I understand the
8 defense's case isn't closed?

9 THE COURT: What are you going to do next?

10 MR. D'ALBA: Today we have one more witness to
11 call to verify his activities, hunting in that area.

12 THE COURT: Okay. Well, listen, do you want to
13 have an offer on that while we are here? Who are you
14 going to call and what's he going to do? We will move
15 along.

16 MR. D'ALBA: Before I give you his name, I'll tell
17 you -- while I'm looking for his name -- what we are
18 going to call him for. This is an individual who has
19 hunted on several occasions with my client in that
20 area. He's also the individual that my client made a
21 reference to in his direct testimony as stopping at his
22 house and stopping at an area where he was caretaker.

23 THE COURT: Jacobowski or something?

24 MR. D'ALBA: Exactly. Joseph Ratajczak.

25 THE COURT: He's here, you want to start with him?

1 MR. D'ALBA: I anticipate -- he's supposed to be
2 here at ten o'clock.

3 MR. ZAK: What else is he going to say? Is that
4 your whole offer?

5 MR. D'ALBA: That's the whole gist of it, that he
6 hunted in that area with my client previously. It's
7 certainly relevant.

8 THE COURT: Do you object to testimony like that?

9 MR. ZAK: No.

10 THE COURT: Okay. We will take that witness now.
11 After we get him, where are we going?

12 MR. ZAK: Is that the close of your case?

13 MR. D'ALBA: I do plan to call the defendant once
14 again.

15 THE COURT: For what?

16 MR. D'ALBA: Briefly.

17 MR. ZAK: He's already testified.

18 THE COURT: Let me find out why. I may decide he
19 already testified. Go ahead.

20 MR. D'ALBA: I want to introduce the hunting
21 licenses and whatnot through him. Prosecution has
22 yet -- although we asked for exculpatory evidence, the
23 prosecution has failed up to this point, although I
24 requested it, to surrender to us or to turn over to us
25 the actual license for hunting and fishing that was

1 taken from my client at the time of his arrest. This
2 is -- although it's been testified to that he did have
3 the licenses, it's a fundamental element, requisite
4 prima facie element of our defense to face an
5 exception. And I don't want to fail on a technical
6 statement that we didn't introduce it.

7 THE COURT: Basically, you want to put the
8 defendant on to say I had these two licenses? Do you
9 have a problem with that?

10 MR. ZAK: Well, if that's the only purpose, but
11 frankly, I told Mr. D'Alba before he made that
12 statement that he just made now, I told him before we
13 began this session, that I understood that we had the
14 license. He has a Xerox that was provided in discovery
15 of that license and we are not sitting on any evidence
16 as he just demanded.

17 MR. D'ALBA: I don't believe we were provided a
18 Xerox, maybe we were.

19 MR. ZAK: I think Mr. D'Alba is being very unfair
20 to the prosecution, making some sweeping statements
21 which I think umbrage --

22 THE COURT: You take umbrage because they are not
23 going to affect anything. We all understand that. I
24 won't let him do that to the jury. Do you want to
25 offer the license or the Xerox copy?

1 MR. D'ALBA: The license itself.

2 THE COURT: Do you have any problem giving him the
3 licenses for this purpose?

4 MR. ZAK: Your Honor, if the only reason why he
5 wants to put the defendant on the stand is to
6 authenticate the license, I would stipulate --

7 THE COURT: That's where I was going.

8 MR. ZAK: -- that the license was taken off of him
9 at that time and we'd introduce it. Furthermore, on
10 rebuttal, I want to put both troopers back on.

11 THE COURT: Why don't you tell me about that.

12 MR. ZAK: Your Honor, this is relevant. I want to
13 put both troopers back on and I could introduce it
14 through their testimony.

15 THE COURT: Okay.

16 MR. ZAK: Either way.

17 MR. D'ALBA: Well, I want to introduce it, number
18 one, and I'd like to introduce it through my client,
19 that's part of my strategy. I think I'm entitled to
20 it. One brief thing I would like to bring out to
21 verify my client's propensity in training outdoors is
22 the fact that he's a Viet Nam Veteran, which we didn't
23 bring up on direct.

24 MR. ZAK: It's immaterial.

25 MR. D'ALBA: It's not immaterial, Your Honor.

1 THE COURT: I wouldn't let you do that. I would
2 believe that's irrelevant for purposes of what we have.
3 I have no problem with you in your case introducing
4 those two licenses, however you want to do it, but I
5 don't want you to put your defendant on the stand to go
6 through the whole thing again.

7 MR. D'ALBA: Okay. If we have a stipulation --

8 THE COURT: If you can accept -- you can accept
9 Ken's stipulation. If you would choose not to do it,
10 start, why don't you, with that guy and the
11 defendant -- the defendant to identify the licenses.
12 If you plan to mark them as exhibits, go ahead, you can
13 do that. Are you going to do that?

14 MR. D'ALBA: That's fine. We will do it by
15 stipulation. We will mark them, do it on the record in
16 the courtroom.

17 THE COURT: Well, but -- okay. Okay. Now, after
18 that's done, you have Ratajczak, you're done. What are
19 you going to do next, sir?

20 MR. ZAK: All right. The defendant, when he was
21 on the stand, stated that he gave these officers, at
22 least one of the officers, targets that he had been
23 shooting at.

24 THE COURT: Yeah.

25 MR. ZAK: He stated that he had a red hat.

1 THE COURT: Okay.

2 MR. ZAK: He stated --

3 THE COURT: Listen, you're welcome to put on
4 anything that rebuts what he said, but I don't want to
5 put it on to fortify something that's uncontested.

6 MR. ZAK: Of course not.

7 THE COURT: Okay. Fine.

8 MR. ZAK: I want to get this trial over with.

9 MR. D'ALBA: But --

10 MR. ZAK: I have more to say, Jay. The defendant
11 had a different view of his statements to the officers.

12 THE COURT: I understand.

13 MR. ZAK: And the officers have to take the stand
14 to rebut.

15 THE COURT: How are you going to do this, through
16 Trooper Myers only?

17 MR. ZAK: First I want to put Trooper Marino on,
18 he's going on vacation, we are holding him back.

19 THE COURT: Ken, you can go do that then, ask
20 Myers as to what happened at the car. We are not going
21 to rehash things that are already in evidence.

22 MR. D'ALBA: Yes, you are.

23 THE COURT: No, wait, I'm not going to let him.

24 MR. ZAK: Gee whiz.

25 THE COURT: I'll check it, you would have no worry

1 about that now, he can do that.

2 MR. ZAK: It's just matters that were opened up by
3 the defendant under direct and cross-examination of the
4 defendant.

5 THE COURT: He's allowed to do that.

6 MR. ZAK: Where he differed with these officers,
7 and we have a right to do that, we have a right to do
8 that.

9 THE COURT: Okay.

10 MR. ZAK: For that limited reason.

11 THE COURT: Now, speak to that if you'd like.

12 MR. D'ALBA: Your Honor, all of that --

13 MR. ZAK: Well, there is one more, I'm sorry.

14 THE COURT: All right. Go ahead. Wait, Jay.

15 MR. ZAK: In cross-examining the defendant, I
16 asked him his address and I don't know if I wrote it
17 down, I have the wrong file with me, but according
18 to -- but the defendant gave the officers at least one
19 or two different addresses other than that which he
20 gave in Court, and we also want to bring that out as to
21 where his place of abode may have been. There is a
22 contradiction there, and that's to impeach the
23 defendant's testimony and that's proper rebuttal also.

24 THE COURT: What were you going to say, Jay?

25 MR. D'ALBA: With the exception of the addresses,

1 all the testimony regarding the hat, the targets and
2 whatnot is already there. The troopers were asked did
3 you find any target, Trooper Myers said no. The
4 disagreement about the matter was also brought up by
5 Trooper Myers, it's already on the record. And being
6 that it's only for rebuttal --

7 THE COURT: The trooper said -- one of the
8 troopers didn't talk about targets, I think that's sort
9 of a new area.

10 MR. D'ALBA: No, I believe he did, he was asked
11 because I recall -- and my memory could be wrong, but I
12 recall him saying that he did not see any targets. He
13 said that the defendant said something about targets,
14 but he didn't see them in the car.

15 MR. ZAK: Well, see, the defendant testified that
16 he had these red targets, supposedly, he got from his
17 friend who runs the gun store, the sporting store, and
18 that he offered them to the trooper and he showed it.
19 He went into some detail about that.

20 THE COURT: Yeah, but Kenny, if we already have
21 it -- now, let's talk about the hat. You put Trooper
22 Myers on to say I didn't see a red hat, then I can put
23 the defendant on again to say, oh, that it is in the
24 car. We will never get done.

25 MR. ZAK: But see, what's important is Trooper

1 Marino when he testified, he said that they searched
2 the car, they got a warrant, they searched the car and
3 no hat appeared.

4 THE COURT: And you're going to ask him if any hat
5 appeared?

6 MR. ZAK: Right.

7 THE COURT: That's okay.

8 MR. D'ALBA: Your Honor, the only inventory that's
9 been supplied to us regarding evidence seized from that
10 automobile regards guns and ammunition.

11 MR. ZAK: They didn't see a hat.

12 MR. D'ALBA: They didn't see a hat, didn't see
13 camping equipment, didn't see any spare tire --

14 THE COURT: I'm going to let you get to that
15 point, but we are not going to go too far with it.

16 MR. ZAK: Those items are not evidence, they had
17 no reason to seize them.

18 THE COURT: Did we get your exhibit on record yet?

19 MR. ZAK: The hunting license?

20 THE COURT: No, the page of the game regulations?

21 MR. D'ALBA: Just to interject, I understand in
22 the rebuttal, you do not intend to produce any more
23 with the guns?

24 MR. ZAK: Well, the defendant mentioned in his
25 testimony that there were two shotguns in the car and

1 they were under some items and so forth. I don't have
2 a problem -- well, I don't know. There is no real
3 need. We have some photographs of the shotguns, we
4 don't have the actual shotguns.

5 THE COURT: I wouldn't let the shotguns in any
6 way.

7 MR. ZAK: They are not really terribly relevant.
8 I'm going to argue it because they mentioned that he
9 had them there.

10 THE COURT: Yes, they brought them, but I don't
11 want them around. We will rule it as he has in mind.
12 Now, before you go, Andrea, yesterday, the defendant in
13 his case identified an item called Exhibit A, which was
14 a small summary of the hunting regulations. The center
15 page of that has been identified by some of the parties
16 to the case, and what I have decided to do is duplicate
17 just the center page, and we have identified that as
18 Defendant's Exhibit A, and that can be an exhibit, the
19 one page as opposed to the whole book.

20 (Whereupon, discussion in chambers was concluded.)

21 THE COURT: Before you start, Mr. D'Alba, I want to
22 explain something to the jury. Juror Number 632, is
23 that you?

24 THE JUROR: Yes.

25 THE COURT: Okay. Ladies and gentlemen, I wanted

1 to explain that we had a call this morning from the
2 gentleman who was Juror Number 3 yesterday. He called
3 this morning and said he was ill, so I met with the
4 attorneys this morning before we got started here and
5 we have decided that the proper thing to do would be to
6 excuse that juror and then select as our replacement
7 juror our first alternate. So we have done that and we
8 are down now to only one alternate left and we will try
9 to get through with what we have.

10 Mr. D'Alba?

11 MR. D'ALBA: Thank you, Your Honor. Your Honor,
12 the defense calls Mr. Joseph Ratajczak to the stand.

13
14 JOSEPH RATAJCZAK,

15
16 having been first duly placed under oath, was examined and
17 testified as follows:

18
19 **DIRECT EXAMINATION**

20
21 BY MR. D'ALBA:

22 Q Sir, would you please state your name?

23 A Joseph Ratajczak.

24 Q And Mr. Ratajczak, where do you reside?

25 A 245 Delp Road (phonetic), East Springfield.

1 Q Mr. Ratajczak, do you know Mr. Douglas Leuschen?

2 A Yes.

3 Q How do you know Mr. Leuschen?

4 A I have hunted and fished with him.

5 Q And how long have you known Mr. Leuschen?

6 A Two, three years.

7 Q And how long have you hunted or fished with him?

8 A In about the same time.

5
9 Q Mr. Leuschen was involved in an incident that occurred
10 on US Steel Property and Old Lake Road, are you familiar with
11 that area?

12 A Yes.

13 Q Have you ever been to that area with Mr. Leuschen?

14 A Yes.

15 Q For what purpose did you go to this area with Mr.
16 Leuschen?

17 A To target practice and to hunt.

18 Q During this last one winter, meaning anywhere from
19 November to February, did you have any occasions to hunt or
20 target practice with Mr. Leuschen?

21 A Yes.

22 Q Did you have an occasion to go to the area where this
23 incident occurred?

24 A Yes.

25 Q And what did you do in that area?

1 A I target practiced with him.

2 Q Did you do any hunting there?

3 A Yes.

4 Q Can you tell us during that same period of time,
5 approximately November through February, on how many occasions
6 did you go?

7 A Oh, I would say six to nine times.

8 Q And that is with Mr. Leuschen?

9 A Yes.

10 Q Did you ever hunt groundhogs in that area with Mr.
11 Leuschen?

12 A In that area, yes.

13 Q Do you ever hunt anything else with him in that area?

14 A Rabbits and deer.

15 Q Did you ever hunt any groundhogs with Mr. Leuschen
16 during the period of time in November to February?

17 A Yes.

18 Q You seem a little bit hesitant, do you want to explain
19 your answer?

20 A That's because it's off season for groundhogs. If you
21 do see them, you do shoot them, that's why.

22 Q Do you expect to see groundhogs when you go out there
23 that time of year?

24 A Not expect, but you do see them.

25 Q Okay. Would you agree that Mr. Leuschen is an avid

1 outdoorsman?

2 A Yes.

3 MR. D'ALBA: I have no further questions, cross.

4 THE COURT: You may cross-examine, Mr. Zak.

5

6 CROSS-EXAMINATION

7

8 BY MR. ZAK:

9 Q Mr. Ratajczak, you have been out in the area in
10 question, Old Lake Road and Rudd Road, that's where this
11 incident happened, you have been out there with Mr. Leuschen,
12 according to your testimony, shooting what sort of a gun?

13 A Pistols and rifles.

14 Q Okay. What?

15 A At what?

16 Q Yes.

17 A Tin cans, targets we put up.

18 Q What sort of targets?

19 A Paper targets, just almost anything.

20 Q Manufactured paper targets?

21 A Yes.

22 Q And when you went out there, what sort of guns did you
23 bring with you?

24 A My pistol and my rifle.

25 Q What kind of pistol, what kind of rifle?

1 A I have a .41 pistol revolver and a .270 Remington
2 rifle.

3 Q Okay. Now, you said that around February, you don't
4 really expect to find groundhogs, do you?

5 A Not too often, no.

6 Q That's because usually they are hibernating, right?

7 A Yes.

8 MR. ZAK: That's all I have, thank you.

9 THE COURT: Anything further of this witness, Mr.
10 D'Alba?

11 MR. D'ALBA: No, Your Honor.

12 THE COURT: Okay. You may step down, Mr.
13 Ratajczak, thank you very much.

14 MR. D'ALBA: Thank you, Mr. Ratajczak. You're
15 free to go.

16 (Whereupon, Defendant's Exhibit B was produced and
17 marked for identification.)

18 MR. ZAK: I'd stipulate to the admission of that.

19 MR. D'ALBA: I can just tell the jury what it is,
20 Your Honor.

21 THE COURT: I'll tell them. Do we have two of
22 them?

23 MR. ZAK: Excuse me, Your Honor.

24 THE COURT: Are they both -- is all you're going
25 to present now, this thing?

1 MR. ZAK: That paper shows the hunting license, it
2 also shows the two provisional firearms licenses.

3 THE COURT: Okay. They are all together as
4 exhibits?

5 MR. ZAK: Those are copies. We don't have the
6 originals here.

7 THE COURT: Ladies and gentlemen of the jury, as I
8 indicated yesterday, there are occasions when the
9 attorneys agree to various particular points, and they
10 did that this morning in my chambers. And this has
11 been submitted as what we'll call Defendant's Exhibit B
12 and Mr. D'Alba would you tell them what this is.

13 MR. D'ALBA: Yes, Your Honor, that is Mr.
14 Leuschen's hunting license and also there is two
15 provisional licenses for him to carry the pistols
16 during hunting activities.

17 THE COURT: Okay. Thank you. This will be marked
18 as Exhibit B for your review later on when you get to
19 looking at the exhibits. I'll accept that.

20 MR. D'ALBA: Your Honor, Mr. Zak, correct me if
21 I'm wrong, there has been also an additional
22 stipulation that Mr. Leuschen was properly licensed for
23 fishing in the Commonwealth of Pennsylvania the date of
24 the occurrence.

25 THE COURT: Is that your recollection as well, Mr.

1 Zak?

2 MR. ZAK: Well, it's our stipulation, Your Honor,
3 that he had a fishing license.

4 THE COURT: Okay. Isn't that also covered by that
5 bottom document there, Mr. D'Alba, on Exhibit B,
6 doesn't that bottom thing refer to fishing as well?

7 MR. D'ALBA: No, Your Honor, I believe the bottom
8 document numbered 499639J just is the hunting license.

9 THE COURT: Okay. Ladies and gentlemen, what that
10 means is there is another stipulation in which the
11 attorneys have agreed that Mr. Leuschen at the time of
12 this incident did have a proper fishing license. I'm
13 not sure you'll have that document before you, but you
14 can take that as factual. Go ahead, Mr. D'Alba.

15 MR. D'ALBA: Your Honor, the defense moves for the
16 introduction of Exhibits A and B.

17 THE COURT: Do you have any objection to those,
18 Mr. Zak?

19 MR. ZAK: Your Honor, just to simplify matters,
20 it's just been brought to my attention that we have the
21 original -- the firearms licenses and we would offer
22 those.

23 MR. D'ALBA: We would --

24 MR. ZAK: Best evidence rule.

25 THE COURT: Do you want to staple them together

1 and mark them as Exhibit B?

2 MR. D'ALBA: So now Exhibit B, including the two
3 original provisional licenses we are moving for
4 introduction into evidence.

5 THE COURT: That would be fine.

6 MR. D'ALBA: The defense rests, Your Honor.

7 THE COURT: Mr. Zak, any rebuttal?

8 MR. ZAK: Your Honor, at this time, yes, there is,
9 Your Honor. At this time, we will call Trooper Marino
10 to the stand.

11 THE TIPSTAFF: You remain under oath, trooper.

12
13 WILLIAM MARINO,

14
15 recalled as a witness, having been previously sworn, was
16 examined and testified as follows:

17
18 DIRECT EXAMINATION

19
20 BY MR. ZAK:

21 Q Trooper, I'll remind you, you're still under oath.
22 Trooper, when you spoke with the defendant at the Girard Police
23 Barracks concerning this matter, did he tell you what he was
24 doing down there at Old Lake Road?

25 A No, sir, he was not specific with me at that time.

1 Q Did he mention hunting?

2 A He said he was using the loaded firearms for hunting.

3 Q Did he indicate any animals that he was hunting?

4 A I don't recall that he did, no, sir.

5 Q Did he indicate any target shooting?

6 A I don't recall he indicated that to me either, sir.

7 Q Did he mention any targets that he had in his
8 possession?

9 A No, sir, not to me.

10 Q Did he mention a red hat that he had in his possession?

11 A He didn't mention it, I did not observe one.

12 Q Excuse me?

13 A He did not mention that, I don't recall observing one.

14 Q Did you go through his belongings in his car?

15 A Yes, sir, we did, it's a process of the search.

16 Q In the course of that search, did a red or orange
17 hunting cap come to your attention?

18 A Not to my recollection.

19 Q Did any targets come to your attention?

20 A Not to my recollection.

21 Q Did you read -- before you spoke with the defendant,
22 did you read to him his Constitutional rights, his miranda
23 rights?

24 MR. D'ALBA: Objection, this was testified to
25 yesterday, Your Honor.

1 THE COURT: Yes, we have already covered that.

2 MR. ZAK: The defendant denied that. The
3 defendant said that he was given his rights after his
4 discussion with the trooper and before he was brought
5 to the magistrate.

6 THE COURT: I'm going to sustain the objection --

7 MR. D'ALBA: Thank you, Your Honor.

8 THE COURT: -- in that we will never finish. If
9 Trooper Marino tells us his version, we will have to
10 put the defendant on to tell his version. We will go
11 'round and 'round. The trooper has already testified
12 on direct what the situation was with the Miranda
13 rights.

14 MR. ZAK: Well, the defendant brought up something
15 completely new on that on the time.

16 THE COURT: I think the defendant, Mr. Zak, just
17 denied what Trooper Marino had already said. We
18 already have that before the jury.

19 BY MR. ZAK:

20 Q Did Mr. Leuschen indicate to you exactly where he was
21 hunting or where he was target shooting?

22 A He never -- to the best of my recollection, he never
23 related anything about target or hunting. At that particular
24 time, he simply stated he was -- I was more concerned with the
25 loaded firearms, and he just advised us that he was using them

1 for hunting.

2 MR. ZAK: Okay. Cross-examine?

3 THE COURT: Mr. D'Alba?

4 MR. D'ALBA: Thank you, Your Honor

5

6 CROSS-EXAMINATION

7

8 BY MR. D'ALBA:

9 Q Trooper, at this point with your involvement in the
10 case when you were called in, you were not the primary
11 investigating officer, were you?

12 A No, sir, I wasn't the first man on the scene.

13 Q That was Trooper Myers, correct?

14 A That's correct.

15 Q And basically, like you testified, you were concerned
16 with the loaded firearms, correct?

17 A I believe so, yes, that would be a correct statement.

18 Q And also as being a Pennsylvania State Police Trooper,
19 your concern is with enforcement of the law and not defense of
20 the law?

21 A Correct.

22 MR. ZAK: I'm going to object to that, that's not
23 germane to this, it's an argumentative question.

24 THE COURT: Well, I think we ought to hear the
25 trooper's answer whether it's yes or no, then we go

1 from that.

2 THE WITNESS: I am an enforcement officer, yes.

3 BY MR. D'ALBA:

4 Q So you're not concerned with looking for evidence that
5 would exculpate or acquit a particular defendant, especially in
6 a case like this, you were concerned with the firearms and the
7 firearms almost exclusively, correct?

8 A I believe the correct statement would be that I am
9 looking for any and all evidence that would be pertinent to that
10 investigation.

11 Q But at that time you weren't looking for a hunting cap,
12 were you?

13 A In answer to your question, I was looking for any and
14 all evidence that would be pertinent to that case.

15 Q You weren't specifically looking for a hunting cap,
16 were you?

17 A I was not specifically looking for a hunting cap, no,
18 sir.

19 Q You also were not specifically looking for hunting
20 targets, were you?

21 A At that time, no, sir, I was not.

22 Q Thank you very much.

23 MR. D'ALBA: No further questions, Your Honor.

24 THE COURT: Mr. Zak?

25

REDIRECT EXAMINATION

BY MR. ZAK:

Q Well, did the defendant tell you about a hunting cap?

MR. D'ALBA: Objection, Your Honor, this was covered.

MR. ZAK: He just opened it up on cross, Your Honor.

THE COURT: I'm going to overrule the objection. and ask the officer to answer that question.

BY MR. ZAK:

Q During your discussions with the defendant, did he mention a hunting cap?

A No, sir.

MR. ZAK: Thank you very much. No further questions.

THE COURT: Anything further, Mr. D'Alba?

MR. D'ALBA: Nothing further.

THE COURT: Thank you, trooper, you're excused.

MR. ZAK: I would ask, even though this is the charging officer, if he may be excused at this time due to other commitments.

THE COURT: Do you have any objection to that, Attorney D'Alba?

MR. D'ALBA: I have no objection. I hope he

1 enjoys his vacation.

2 MR. ZAK: Thank you very much, Trooper Marino.

3 The next rebuttal witness would be Trooper Myers.

4 THE TIPSTAFF: Trooper, you also remain under
5 oath.

6

7

RICHARD MYERS,

8

9 recalled as a witness, having been previously sworn, was
10 examined and testified as follows:

11

12

DIRECT EXAMINATION

13

14 BY MR. ZAK:

15 Q Trooper Myers, when you spoke with the defendant at the
16 time you approached him when this incident began, did the
17 defendant show -- first of all, what did the defendant say he
18 was doing there?

19 A We never got into that right at that point. During the
20 sequence of events, he did mention he was out there target
21 practicing in the steel property.

22 Q All right. Did he show you any targets?

23 A No, there was no targets visible.

24 Q Did he indicate where he was shooting?

25 A No, he did not indicate where he was shooting.

1 Q Did he indicate at any point he was shooting a used
2 shotgun shell?

3 A No, he did not.

4 Q Okay. And did he tell you where he lived?

5 A At that time he said he was living out of his car.

6 Q Okay. Did he give you an address at any point?

7 A During the course of obtaining information, he
8 mentioned, I believe, the Homer Avenue address as his parents
9 and his mailing address.

10 Q Okay. Did he give any other address?

11 A No, none, although he did say that he was living out in
12 the State of Virginia at one time, or someplace south.

13 Q Okay. Did he -- now, when he was sitting in the car,
14 did he make -- when you approached the car, what position was he
15 in?

16 MR. D'ALBA: Objection, Your Honor, I don't see
17 that this is proper rebuttal evidence.

18 THE COURT: I think we already have that covered
19 probably from both sides in your cases in chief, so I
20 think we can skip that at this time.

21 BY MR. ZAK:

22 Q When you obtained the guns in question, did he hand
23 them to you?

24 A No, he did not.

25 MR. D'ALBA: Objection, Your Honor, this was

1 covered.

2 THE COURT: I'm going to overrule that objection
3 in that I'm not really sure we got into the
4 particulars.

5 MR. ZAK: Well, the defendant denied --

6 THE COURT: You can answer that, trooper.

7 THE WITNESS: No, I did not. I took him out of
8 the car over his objection and his frustration.

9 BY MR. ZAK:

10 Q All right. Now, at any point during your encounter
11 with the defendant, did you see a red or hunter-orange hat?

12 A No, there was none in the car that I saw.

13 Q Okay. Did he point out one to you or did any come to
14 your attention in the course of this?

15 A No, not at all.

16 Q Okay. And when he spoke to you, how did he behave?

17 MR. D'ALBA: Objection, this was covered on
18 direct, Your Honor.

19 THE COURT: I'm not sure that's proper for
20 rebuttal. I'll sustain that objection.

21 MR. D'ALBA: Thank you, Your Honor.

22 BY MR. ZAK:

23 Q The defendant, during his testimony, stated that his
24 door was open in his car; was it open or closed?

25 A On my approach to the car, the door was closed.

1 Q And was the car on or off?

2 A It was running.

3 MR. ZAK: That's all I have. Cross-examine?

4 THE COURT: Attorney D'Alba?

5

6 CROSS-EXAMINATION

7

8 BY MR. D'ALBA:

9 Q Trooper Myers, you never asked Mr. Leuschen to see his
10 hunting cap, did you?

11 A No, I did not. He did not have one on.

12 MR. D'ALBA: I have no further questions, Your
13 Honor.

14 THE COURT: You may step down.

15 MR. ZAK: We have nothing further of this witness.

16 THE COURT: Anything further on rebuttal, Attorney
17 Zak?

18 MR. ZAK: No, Your Honor, that would conclude the
19 Commonwealth's case.

20 THE COURT: Ladies and gentlemen, the next thing
21 that happens procedurally is that the attorneys will
22 address you. They take turns and they will tell you
23 how they think the testimony that developed during the
24 course of the case should be viewed.

25 Now, we do three things in a row. Each attorney

9

1 will address you with his position, and after that, I
2 will instruct you on the law that's applicable. I
3 don't think we are going to get into those until after
4 lunch because I would like to do that without any
5 breaks, and we can't get it all done between now and
6 then. But if you remember, early on when I instructed
7 you as to decisions I make from the bench as to
8 objections, we get more of those in the rebuttal phase,
9 the part that we just concluded, because in an effort
10 to streamline a case, the rebuttal part of the case is
11 basically narrow, and we try not to repeat what's been
12 done. Now, again, you're not to draw any inferences
13 whatsoever, whether I overrule or sustain an objection.

14 Now, before we close, I want to tell you a little
15 bit about it. At the beginning of the trial, I told
16 you that when the lawyers addressed you preliminarily,
17 those were called opening statements. Those are not
18 evidence, they are arguments based on the evidence that
19 they intended to present during the trial to try to
20 help you understand their position. Those are the
21 lawyers chances to persuade and to demonstrate to you
22 what the evidence has shown. They will do that again
23 in their closing.

24 In deciding the case, when I excuse you to
25 deliberate, you should carefully consider the evidence

1 in light of the various reasons and arguments which
2 each lawyer presents to you. It's the right and the
3 duty of each of the lawyers to discuss the evidence in
4 a manner which is most favorable to the side he
5 represents. You should be guided by those arguments to
6 the extent that they are supported by the evidence and
7 insofar as they aid you in applying your own reasons
8 and your own common sense.

9 Now, before the lawyers summarize to you, we call
10 it argument, but it's not an argument as you generally
11 know it in the layman terminology. Before the lawyers
12 argue their case to you, I want to tell you that there
13 is a difference between arguments by a lawyer and the
14 expression of personal beliefs or opinions by a lawyer.
15 While it is entirely proper, indeed the very purpose of
16 this part of the trial is for a lawyer to argue to you
17 thoroughly and vigorously about what the evidence
18 showed in the case. At the same time, however, a
19 lawyer may not express a personal belief or a personal
20 opinion during this argument. Now, the reason for
21 that, of course, is because it's not a lawyer's
22 personal belief or opinion that matters in the case and
23 just as I have told you earlier, it's not my personal
24 belief or opinion. Any personal belief or opinion that
25 I or the attorneys might express as to the facts or the

1 testimony or the evidence should not affect your
2 consideration in the matter. The only thing you should
3 decide is what the evidence has shown, and your verdict
4 must be based only on the evidence as it was presented
5 to you from this witness stand in this courtroom. And
6 in the instructions that I will give you at the
7 conclusion of the lawyers' arguments I will again
8 reiterate that.

9 Now, I think we will stand adjourned and we are
10 going to reconvene at one-thirty, and the purpose for
11 the two-hour delay is that the attorneys and I have
12 some work to do between now and then. And if we come
13 back at one-thirty, that will give us ample time to do
14 that. We will stand adjourned until one-thirty.

15 (Whereupon, court recessed at 11:25 a.m. and
16 reconvened at 1:35 p.m.)

17 MR. ZAK: Good afternoon, Your Honor.

18 MR. D'ALBA: Good afternoon, Judge.

19 THE COURT: Good afternoon fellas. Are you ready?
20 You can start.

21 Let's do a couple of record keeping things on the
22 record. Do you want to come up, attorneys?

23 (Whereupon, the following discussion occurred
24 on the record at sidebar:)

25 THE COURT: We will put on the record the things

1 we decided in chambers without Andrea being there.

2 First, Andrea, there is a request by Attorney
3 D'Alba for a de minimis charge and I'm refusing that.

4 MR. ZAK: Excuse me, Your Honor.

5 (Whereupon, a discussion was held off the
6 record.)

7 THE COURT: And I'm refusing that charge.
8 Secondly, Attorney D'Alba has asked me to state
9 somewhere in my instructions that a semiautomatic
10 revolver would qualify as part of the exception to the
11 charge, even though it might be illegal for hunting,
12 that would be a game law violation only. Now, I don't
13 know if we have marked all of our exhibits, but from
14 the defense standpoint, there should be an A and a B,
15 and the A is the single page. The final ruling is
16 Exhibit 17 of the Commonwealth that you had objected to
17 earlier --

18 MR. D'ALBA: Excuse me, Your Honor, you didn't
19 indicate you're going to give that second instruction
20 regarding --

21 THE COURT: Yeah, here's what I thought I would
22 do. Let me rule on 17. We are going to allow Exhibit
23 17 to be presented.

24 Now, on the points of your charge, I think instead
25 of reading any of them, I'm going to cover them in my

1 charge. At the conclusion of my charge, if you think
2 you want more, we will talk about whether or not I
3 should do it. But rather than read your charge, your
4 points, I think when I get to the part, tell them about
5 the trial and the exceptions and, see, I think it will
6 be covered good.

7 MR. D'ALBA: But you're not referring to my
8 closing argument, you're just referring to your points?

9 THE COURT: My charges.

10 (Whereupon, discussion at sidebar was concluded.)

11 MR. D'ALBA: May it please the Court, ladies and
12 gentlemen of the jury, Mr. Prosecutor.

13 First of all, ladies and gentlemen, I'd like to
14 thank you for your participation. Not only is your
15 participation helpful, but the quality of your
16 participation is excellent. I have seen several jury
17 trials and especially after your initial ordeal, it's
18 difficult sometimes to pay attention, but your
19 dedication was extraordinary and I thank you all for
20 that.

21 As a defense attorney, I'm frequently asked how
22 can you defend those people. That's a question that
23 bothers me, it bothers me for a couple reasons. First
24 of all, it ignores the presumption of innocence. Mr.
25 Leuschen sits just as each of you and the judge sits,

1 we are all presumed innocent by any offense charged by
2 the government until we are convicted beyond a
3 reasonable doubt. So that question, first of all,
4 ignores that principle of presumption of innocence.
5 But I can answer that question, how can you defend
6 those people very quickly, very easily, by stating to
7 you, it's easy to represent Douglas Leuschen and
8 innocent people like himself who are unjustly accused,
9 that is how and that is why I defend criminal cases.

10 But the more important question to me are these:
11 How many innocent people are already suffering from
12 unjust accusations and unjust convictions? And
13 secondly, how can we prevent this from occurring in the
14 future? Well, the answer to that was provided to us in
15 1859, or one of the answers, by Abraham Lincoln, and he
16 told us, he told us those who would deny freedom to
17 others deserve it not for themselves, and under a just
18 God, cannot long retain it. Well, ladies and gentlemen
19 if Doug Leuschen can be unjustly accused of being
20 criminal, we are all exposed to that same danger. We
21 can only protect our liberty by protecting the other
22 man's freedom. You can only be free if I'm free.
23 Although we may acquire liberty, once we lose that
24 liberty, it is forever lost, it can never be regained.

25 Who is Doug Leuschen? I suggest to you that he's